

A mediation primer for Realtors®

When is the right time to mediate?

Most parties first think about using mediation after they're already involved in litigation. Then, a mediated solution can save attorney's fees, litigation costs and time, and minimize the risks of an adverse judgment. Mediation, however, can be especially beneficial in resolving disputes before they ever reach a courtroom, helping those looking to "put the deal back on track" and bring it to closure.

How do I get the process started?

Make a written request for mediation to the other side, citing the mediation provision of the CAR contract and proposing the name of a mediator. Review the contract for any exclusion which might excuse the parties from mediating, such as a foreclosure, unlawful detainer, probate or bankruptcy proceeding.

How do I find a qualified mediator?

Select someone with both a substantive expertise in real estate AND the ability to skillfully facilitate negotiations between the parties.

What if the other side refuses to participate?

There is no procedure to compel a party to mediate or to agree to use the particular mediator you've selected. However, if a party files a lawsuit without first attempting to resolve the matter through mediation, or refuses to mediate after a request to do so, then that party isn't entitled to an award of attorney's fees, even if such fees would have otherwise been recoverable.

How is a hearing date set?

A hearing can usually be scheduled shortly after the mediator is contacted. The mediator gives everyone a written notice of the hearing, and consults with the parties and their attorneys about how the process can be tailored to suit an individual's needs. This kind of preparation between the mediator and the participants enhances the prospects for a successful resolution.

How do I get ready for the hearing?

Have a clear understanding of the background of the transaction and be familiar with the relevant communications and documents bearing on the dispute.

How can I play a constructive role at the mediation?

Be an information resource for your client and provide emotional support.

Why mediation works. . .

Client satisfaction *Mediation promotes greater client satisfaction, both with the process of settling differences and the results achieved.*

Efficiency *Mediation is a more efficient way of resolving most disputes, saving attorney's fees, litigation costs and time.*

Interest-based solutions *The mediator can identify and explore interests and concerns beyond the legal issues and dollars in dispute, and help formulate creative solutions.*

Risk management *Instead of risking an uncertain outcome imposed by a judge or jury, the parties can often devise a better, more advantageous mutual agreement.*

Confidentiality and privacy *Confidential discussions allow participants to speak candidly and avoid public disclosure of sensitive information.*

Communication *Mediation gives the parties an opportunity to communicate more effectively and to recognize the common ground that may lead to resolution.*

Preserving relationships *Parties are encouraged to consider another point of view - - the first step in preserving relationships that have been ruptured by conflict. Alternatively, mediation can be used to end relationships at minimum financial and psychological costs.*

